IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11920 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KESHAV (VEJALPUR) NON TRADING ASSOCIATION

Versus

GUJARAT STATE FINANCE CORP.

Appearance:

1. Special Civil Application No. 11920 of 2001

MR SK JHAVERI for Petitioner No. 1-2

MR RD DAVE for Respondent No. 1

NOTICE SERVED for Respondent No. 1-3

NOTICE SERVED BY DS for Respondent No. 2-3

MS JAYSHREE C BHATT for Respondent No. 4

MR GM JOSHI for Respondent No. 5

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 13/05/2005

CAV JUDGEMENT

In this petition under Article 226 of the Constitution of India, the petitioners have prayed for an

appropriate writ, direction or order directing the respondents, more particularly Gujarat State Financial Corporation, not to dispossess them from Survey No. 326/1 of Village Vejalpur (Final Plot No. 150) of Taluka City District Ahmedabad and further restraining the respondents from claiming any right in the properties of the petitioners being Survey No. 326/1 of Village Vejalpur (Final Plot No. 150), Taluka, City District-Ahmedabad.

2. It is the case of the petitioners that they are Non-Trading Association registered under the Bombay Non-Trading Corporation Act, 1959 and on 22nd November 1999 the petitioners entered into registered Sale Deeds with the owners of Survey No. 326/1 admeasuring 23 gunthas (2327 sq.mtrs.) of Village Vejalpur, Taluka City District Ahmedabad. It is also the case of the petitioners that their names were also mutated in the revenue record. It is the case of the petitioners that on 31st March 2000 original-owner has become guarantor pursuant to loan taken by one Prasiddhi Tea Co.Pvt.Ltd., from the respondent State Financial Corporation and the land in question was alleged to have been mortgaged to the said Corporation. It is the case of petitioners that on 28th March 2001 the officers of respondent Corporation tried to take possession of the land in question pursuant to non-payment of the loan by the aforesaid Tea Company and the petitioners resisted the same and respondent Corporation was informed that they are owners of the properties and they are in possession of the said property, therefore the respondents cannot interfere with possession of the petitioners. It is the case of the petitioners that on 29th May 2001 the respondent Corporation replied to the petitioners pursuant to the aforesaid notice dated 28th March 2001 and informed that the land in question is mortgaged with the Corporation by the original owners with original deeds and therefore the petitioners have no right in the properties. It is the case of the petitoners that the guarantor was not the owner of the land on the day on which the respondent Corporation has accepted the land in mortgage, i.e., on 31st March 2000 as the petitioners had purchased the said land by registered Sale Deeds on 22nd November 1999 and inspite of that as the respondents were trying to dispossess the petitioners from possession of the land in question the petitioners had preferred the present Special Civil Application under Article 226 of the Constitution of India for the aforesaid reliefs. It is the contention of the petitioners that they have purchased the properties after verifying the revenue records and title of the properties and that their names

were entered into in the revenue records. It is the case of the petitioners that the original owner Ranchhodbhai Khodabhai Desai is in habit of seling his properties to different persons and the said Ranchhodbhai has given the lands in question by way of security the very land by submitting that the said Ranchhodbhai Khodabhai Desai is the owner of Survey No. 326/1 whereas in fact he had already disposed of the properties in favour of the petitioners on 22nd November 1999. Thus the respondents have not verified the revenue records and had accepted the property in mortgage which was not owned by the persons who have become guarantors. Thus, by submitting that the petitioners are the owners of the land in question which is mortgaged with the respondent Corporation subsequently by the original-owner who has no title it is contended the respondent Corporation cannot take possession of the land in question from the petitioners and therefore it is requested to allow the present Special Civil Application.

3. In response to the notice issued by this Court, Shri RD Dave, learned advocate appeared on behalf of Gujarat State Financial Corporation ["GSFC" for short]. Pursuant to the order passed by this Court dated 21st March 2002 original-owner Ranchhodbhai Khodabhai Desai was joined as party-respondent. Similarly, original borrowers M/s. Prasiddhi Tea Company Pvt.Ltd., was also permitted to be joined as party-respondent in the present Special Civil Application. An affidavit-in-reply is filed on behalf of GSFC. It is submitted that petitioners are claiming ownership rights on the aforesaid lands in question pursuant to the alleged two sale deeds which are alleged to have been signed by so-called power of attorney holder Shri Rameshbhai Lallubhai Chokshi for Ranchhodbhai Khodabhai Desai (original owner). It is further submitted that Shri Rameshbhai Lallubhai Chokshi was never given any power of attorney by the said Ranchhodbhai Desai nor the said Rameshhai Lallubhai Chokshi was having any authority to execute any sale deed in favour of the petitioners or in favour of anybody else on behalf of original-owners. It is submitted that in fact the said Shri Rameshbhai Chokshi has committed fraud in executing the sale deed without having authority of law. It is also further submitted that the original owners upon realising that some notorious landgrabbers are trying to grab their lands by committing forgery or by creating forged power of attorney released a public notice through their advoate in local newspaper 'Sandesh', Ahmedabad Edition dated 30th May 1997, in local newspaper 'Gujarat Samachar', Ahmedabad Edition dated 2.6.1997, and again in

'Sandesh', Ahmedabad Edition dated 22nd August 1997 by which the original-owners have very clearly given notice to the public at large that the said Rameshbhai Lallubhai Chokshi has not been given any power of attorney on his behalf in respect of the said land bearing Survey No. 326/1 and 326/2, Final Plot No. 150 and 149 respectively situate at Vejalpur, Ahmedabad. It is also further submitted in the affidavit-in-reply that the petitioners had made an application to the Talati, Vejalpur for mutation of entries in their favour to register the so-called sale deed which have been mutated vide entries No. 8182 and 8183 in village form No.6. However the said entries were objected by the original owners before the City Mamlatdar, Ahmedabad and ultimately after hearing the petitioners and the original-owners, City Mamlatdar by order dated 11.2.2003 has cancelled and set aside the aforesaid two entries from the revenue records. It is also further submitted a news item was published in the newspaper 'Sandesh', Ahmedabad dated 17.10.2000 that the said person Rameshbhai Lallubhai Chokshi has been arrested as an accused by Anti-Terrorist Squad in connection with fake notes of Rs. 500 and was handed over to Ahmedabad police for further investigation. It is therefore submitted that the said Rameshbhai Chokshi is having criminal mentality and wanted to grab the land by executing sale deed illegally in favour of the petitioners by committing fraud though the said Rameshbhai Lallubhai Chokshi is not power of attorney holder of owners and they have not given any authority to the said Rameshbhai Chokshi or anybody else to sell or dispose of their lands. Therefore it is submitted that fraud is committed by the petitioners as well as the said Rameshbhai Chokshi to grab the valuable lands of the respondents. It is further submitted that the owners have never sold the lands in question to the petitioners and have not given any power of attorney to the said Rameshbhai Lallubhai Chokshi to sell the said lands to the petitioners on behalf of owners as power of attorney holders or otherwise and therefore the said document produced on record by the petitioners are bogus, false and concocted and are not in fact executed by the original owners of the lands in question and therefore no reliance can be placed on the so-called documents. Under the circumstances, it is requested to dismiss the present Special Civil Application.

3.1. An affidavit-in-rejoinder is filed to the affidavit-in-reply filed on behalf of the GSFC by which the petitioners have pointed out that in fact the original owner had executed irrevocable power of attorney in favour of Rameshbhai Chokshi on 10th August 1992 in

lieu of receiving full consideration for the land. In the affidavit-in-rejoinder, the petitioners have also pointed out with regard to some litigations pending against the original-landowners and have tried to suggest that the original-owner is also in habit of committing frauds and therefore it is requested to allow the present Special Civil Application.

4. Heard the learned advocates appearing on behalf of the parties. It appears from the pleadings, that the petitioners claim to have purchased the land in question by registered Sale Deed dated 22nd November 1999 and both the sale deeds are executed by one Rameshbhai Chokshi as power of attorney holder of original-landowner. It is also required to be noted that the very Rameshbhai Lallubhai Chokshi is shown to be a confirming party. It is also required to be noted that the purchaser is one Narendrakumar Lallubhai Chokshi for and on behalf of the petitioner Non-Trading Corporation and the said Narendrakuamr Lallubhai Chokshi is brother of the aforesaid Rameshbhai Chokshi. It is also required to be noted that the said Rameshbhai Chokshi is claiming to be power of attorney holder of the original owner by virtue of the power of attorney dated 10th August 1992 and the very original-landowner Ranchhodbhai Khodabhai Desai had disputed any power of attorney being executed in favour of the said Rameshbhai Chokshi, and even public notices were also given in the local newspapers, 'Sandesh' and 'Gujarat Samachar' informing the public at large that there is no power of attorney executed in favour of Rameshbhai Lallubhai Chokshi and therefore nobody should enter into any transaction with the said Rameshbhai Chokshi with regard to the land in question and if any transaction is there it will not be binding to the original-landowners. Inspite of the aforesaid public notices, it appears that the petitioners alleged to have purchased the land in question from the aforesaid Rameshbhai Lallubhai Chokshi as power of attorney holder of the original-landowners. Under the circumstances, whether the said Rameshbhai Lallubhai Chokshi had in fact any authority to sell the land in question as a power of attorney holder of the original-landowners or not is a disputed question of fact, which cannot be decided in a petition under Article 226 of the Constitution of India and therefore on the basis of the aforesaid alleged sale deed executed by the said Rameshbhai Lallubhai Chokshi as a power of attorney holder of the original-landholders in favour of the petitioners, whether any valid title has been passed in favour of the petitioners or not is also a disputed question of fact which requires adducing of evidence and such a question is not required to be

decided in a petition under Article 226 of the Constitution of India and the proper remedy for the petitioners would be to approach the Civil Court. The so-called power of attorney-holder Rameshbhai Chokshi claims his authority on the basis of the power of attorney of 1992. However, in the year 1997, by public notice, the original-landowners have disputed any power of attorney executed in favour of Rameshbhai Chokshi and in fact the landowner had warned the public at large from entering into any transaction with the said Rameshbhai Chokshi,and inspite of that the petitioners allegedly purchased the said land in the year 1999. It is also required to be noted that the entry in the Revenue Record of the alleged Sale Deed of 1999 in favour of the petitioners came to be objected by the original-landowners and the City Mamlatdar has quashed and set aside the aforesaid two entries which were in favour of the petitioners. Thus, the title in favour of the petitioners is already disputed by the original-landowners. It is required to be noted that the original-landowner Ranchhodbhai Khodabhai Desai had given his property in question as a security/mortgage with the GSFC for the purpose of giving loan to the aforesaid Company which is not repaid and the GSFC has exercised its powers under Section 29 of the State Financial Corporations Act, which is challenged by the petitioners in the present Special Civil Application.

4.1. However, considering the aforesaid facts and circumstances of the case where disputed questions of facts arise, namely the title in favour of the petitioners; the authority of the so-called power of attorney-holder Rameshbhai Chokshi who is alleged to have sold the properties in question to the petitioners; etc., the same cannot be decided in a petition like the one on hand under Article 226 of the Constitution of India.

5. For the reasons stated above, and considering the disputed questions of facts, the present Special Civil Application filed under Article 226 of the Constitution of India is not required to be entertained and is required to be dismissed and is accordingly dismissed. Notice is discharged. Ad-interim relief granted earlier stands vacated forthwith. However,it is made clear that this Court has not expressed anything on merits of the case in favour of either parties and it will be open for the petitioners to file a civil suit which can be considered on its own merits and on the basis of the evidence that may be adduced by the parties.

[M.R. Shah, J.]
rmr.

At this stage, Shri Zaveri, learned Advocate on behalf of the petitioner has requested to continue the ad-interim relief granted earlier. In the facts and circumstances of the case, the ad-interim relief granted earlier is directed to continue till 22nd June 2005.

[M.R. Shah, J.]
rmr.